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Usury Law

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Instructions for Creating Initiative Petitions

RECEIVED
OFFICE OF THE ATTORNEY GENERAL
JAN 25 1935

INITIATIVE MEASURE TO BE SUBMITTED TO THE ELECTORS

The Attorney General has summarized the proposed measure as follows:

USURY LAW. INITIATIVE. Amends Sections 1 and 3 thereof, and adds Sections 6, 7, 8, 9 and 10. Written agreement for interest rate unnecessary. Corporations cannot recover treble amount of interest paid. Defines "construction loans" and provides for computing interest thereon. Excepts agreements giving borrower option to pay before maturity. If maturity is accelerated by default, interest paid in advance is not usurious. Corporations cannot plead usury. Legislature regulates pawnbrokers and "industrial loan companies."

STATE OF CALIFORNIA,
County (or City and County) of Los Angeles } ss.

To the Honorable Secretary of State
of the State of California:

We, the undersigned, registered, qualified electors of the State of California, residents of _____ County (or City and County), present to the Secretary of State this petition, and hereby propose that the "Usury Law" of the State of California, adopted by the electors as an initiative measure November 5, 1918, be amended as hereinafter set forth, and petition that same be submitted to the electors of the State of California for their adoption or rejection at the next succeeding general election, or as provided by law.

An act to amend sections 1 and 3 of an act known as the "usury law" and entitled "An act, to be known as the usury law, relating to the rate of interest which may be charged for the loan or forbearance of money, goods or things in actions, or on accounts after demand, or on judgments, providing penalties for the violation of the provisions hereof, and repealing sections one thousand nine hundred seventeen, one thousand nine hundred eighteen, one thousand nine hundred nineteen, one thousand nine hundred twenty of the Civil Code and all acts and parts of acts in conflict with this act" approved by the electors at the general election of November 5, 1918, and to add five new sections to said act to be numbered sections 6, 7, 8, 9, and 10, and relating to rates of interest, exempting certain classes of loans and certain classes of business from the provisions of said act, and providing that corporations may not assert or plead usury.

The People of the State of California do enact as follows:

Section 1. Section 1 of an act designated as the "usury law" entitled, "An Act to be known as the usury law, relating to the rate of interest which may be charged for the loan or forbearance of money, goods or things in action or on accounts after demand, or on judgments, providing penalties for the violation of the provisions hereof, and repealing sections One Thousand Nine Hundred Seventeen, One Thousand Nine Hundred Eighteen, One Thousand Nine Hundred Nineteen, and One Thousand Nine Hundred Twenty of the Civil Code and all acts and parts of acts in conflict with this act," is hereby amended to read as follows:

"Section 1. The rate of interest upon the loan or forbearance of any money, goods or things in action or on accounts after demand or judgments rendered in any court of this state, shall be seven dollars upon the one hundred dollars for one year and at that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding twelve dollars on the one hundred dollars for one year and not exceeding that rate for a greater or less sum or for a longer or shorter time."

Sec. 2. Section 3 of said "usury law" is hereby amended to read as follows:

"Sec. 3. Every person, company, or association, except a corporation, who for any loan or forbearance of money, goods, or things in action shall have paid or delivered any greater sum or value than is allowed to be received under the preceding sections, one and two, may, either in person or his or its personal representative, recover in an action at law against the person, company, association, or corporation who shall have taken or received the same, or his or its personal representative, treble the amount of the money so paid or value delivered in violation of said sections, providing such action shall be brought within one year after such payment or delivery. And any person, company, association, or corporation who shall violate the provisions of sections one and two of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment not more than six months, or by both such fine and imprisonment, and for each subsequent offense and conviction shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars and by imprisonment not less than six months nor more than one year. The penalties herein provided for the violation of this section and said sections one and two shall apply to and be imposed upon each member of any unincorporated company, association, or of any copartnership, and upon each officer and director of a corporation who shall violate either of said sections."

Sec. 3. A new section is hereby added to said "usury law" to be numbered section 6, and to read as follows:

"Sec. 6. A construction loan is hereby defined as a loan in which the instrument evidencing the indebtedness or loan is secured, either wholly or in part, by a mortgage, deed of trust, or lien upon real property upon which an improvement is being or is to be constructed as part of the security for the loan, and in which the agreement between the borrower and lender is that the money be advanced by the lender wholly or partially as the construction of said improvement progresses. For the purpose of computing whether the interest charged or received on any construction loan exceeds the rate of interest permitted to be charged or received by this Act, the full principal amount of the loan shall be deemed to be advanced thirty days before the commencement of construction of said improvement, though advancements on said loan actually be made from time to time as the improvement progresses, but this provision shall not apply to advances made before said thirty day period."

Sec. 4. A new section is hereby added to said "usury law" to be numbered 7, and to read as follows:

"Sec. 7. It may be agreed for any consideration that any loan or forbearance of money, goods or things in action may be paid in whole or in part before maturity at the option of the borrower or his successor in interest, and the provisions of this Act shall not apply to any such agreement or to any such consideration, but such consideration shall only be payable or paid if and when the option to pay before maturity is exercised."

Sec. 5. A new section is hereby added to said "usury law" to be numbered section 8, and to read as follows:

"Sec. 8. If the maturity of any loan or forbearance of money, goods or things in action, or of the instrument evidencing said loan or forbearance, is accelerated for default thereon, no credit shall be required to be given for interest taken in advance and unearned, and neither said loan or forbearance nor said instrument evidencing the same shall be deemed to be usurious, if, had said loan or forbearance or said instrument evidencing the same been performed as agreed, the interest rate thereon would not have exceeded a rate of twelve dollars on the one hundred dollars per year for the full period of the loan."

Sec. 6. A new section is hereby added to said "usury law", to be numbered section 9, and to read as follows:

"Sec. 9. No provision of this Act limiting the rate of interest to be charged, taken, received or paid for the loan or forbearance of any money, goods or things in action shall apply to the loan or forbearance of money, goods or things in action made to a corporation, nor shall any guaranty, bond, note or other evidence of indebtedness of any corporation be set aside, impaired or adjudged invalid in whole or in part by reason of anything in this Act contained, and hereafter no corporation may plead, assert or claim usury in any action or proceeding."

Sec. 7. A new section is hereby added to said "usury law", to be numbered section 10, and to read as follows:

"Sec. 10. The provisions of this Act shall not apply to a loan or forbearance of money, goods or things in action made by a person, corporation, company or association conducting the business of a pawnbroker in the course of such business as a pawnbroker, and pawnbrokers shall be subject to regulation by the legislature of the State of California. The provisions of this Act shall not apply to the business of 'industrial loan companies' as defined by the act of the legislature of the State of California, entitled 'An act defining industrial loan companies, providing for their incorporation, powers and supervision', as approved May 18, 1917, or as subsequently amended, or as the same may be hereafter amended, and the business of such 'industrial loan companies' shall be subject to regulation by the legislature of the State of California."